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Supreme Court, U.S.
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No. 93-1067

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

TV NEWS CLIPS OF ATLANTA, INC., CAROLYN JANNETTE DUNCAN AND JEFFREY DUNCAN,

Petitioners,

vs.

GEORGIA TELEVISION COMPANY D/B/A WSB-TV

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the district court abused its discretion in entering an injunction against Defendants, identical to the injunction previously entered against the same Defendants in the WXIA case, which prohibits Defendants' systematic, unauthorized copying and sale of WSB-TV's copyrighted programming?

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BRIEF IN OPPOSITION

Respondent Georgia Television Company d/b/a WSB-TV ("WSB-TV")[1/] hereby files this brief in

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1/ Pursuant to Rule 29.1, Sup. Ct. Rules, the following information is provided: Georgia Television Company d/b/a WSB-TV is a wholly-owned subsidiary of Cox Enterprises, Inc.

opposition to a Petition for Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above entitled case on January 8, 1993.

I.

STATUTORY PROVISIONS INVOLVED

This case involves provisions of the Copyright Act of 1976, including: 17 U.S.C. §§ 102, 106, 107, 410, 411, 412, 501, 502 and 505.

II.

COUNTERSTATEMENT OF THE CASE

This is the second time that Defendants have petitioned this Court for review of a judgment against them based on their unauthorized copying and sale of copyrighted broadcast programming. In 1985, this Court denied Defendants' petition for certiorari in Pacific and Southern Company v. Duncan, 572 F.

Supp. 1186 (N.D.Ga. 1983), aff'd in part and rev'd in part, 744 F.2d 1490 (11th Cir. 1984), cert. denied, 471 U.S. 1004 (1985) ("WXIA I"), on remand, 618 F. Supp. 469 (N.D.Ga. 1985), aff'd, 792 F.2d 1013 ("WXIA II") (sometimes collectively referred to as "WXIA"), a case nearly identical to this one in which the district court entered, and the Court of Appeals for the Eleventh Circuit affirmed, a permanent injunction against these same Defendants for repeated copyright violations. The injunction entered by the district court and affirmed by the Eleventh Circuit in the instant case is identical to the injunction in WXIA.

A. The WXIA Case

In WXIA, the district court held that Defendants' copying and sale of a portion of a WXIA news broadcast infringed WXIA's copyright and that such

activity was neither "fair use" nor protected by the First Amendment. WXIA I, 572 F. Supp. 1186. The district court nevertheless refused to enjoin Defendants' activities, concluding that such an injunction would infringe Defendants' First Amendment rights. Id.

The Court of Appeals for the Eleventh Circuit affirmed the district court's entry of judgment for WXIA, but reversed as an abuse of discretion the district court's refusal to enter an injunction. WXIA I, 744 F.2d 1490. The Court of Appeals reasoned that "[t]his is a classic case . . . of a past infringement and a substantial likelihood of future infringements which would normally entitle the copyright holder to a permanent injunction against the infringer." Id. at 1499.

The Court of Appeals remanded the case to the district court with instructions to enter a permanent injunction. On remand, and after this Court's denial of Defendants' petition for writ of certiorari, the district court entered a permanent injunction against Defendants, which was affirmed by the Eleventh Circuit. WXIA II, 792 F.2d 1013.

B. The Instant Litigation

On December 11, 1986, following the Eleventh Circuit's affirmance of the permanent injunction in WXIA and after hearing rumors that despite the WXIA rulings Defendants were copying and selling copies of WSB-TV's broadcasts, WSB-TV began serving on Defendants, pursuant to 17 U.S.C. § 411(b), advance notices of potential infringement. The notices reiterated to Defendants that any copying or sale of copies of WSB-TV's broadcast news

programs would constitute unlawful copyright infringement and demanded that Defendants cease and desist all such activity. Despite the teaching of the WXIA decisions and despite WSB-TV's periodic service on Defendants of such advance notices of potential infringement, Defendants continued to copy and sell copies of WSB-TV's broadcast news programs and portions thereof.

Despite having received an advance notice of infringement from WSB-TV on June 29, 1988, Defendants copied and sold to the city of Atlanta copies of portions of 27 different WSB-TV broadcast programs. The portions of these programs copied and sold by Defendants consisted for the most part of Atlanta-related aspects of the Democratic National Convention and ranged from reports on construction disputes and demonstrations and events within the

Convention hall itself to interviews with newsmakers, political commentary and an hour-long special, made possible only through the use of complex and expensive multiple satellite feeds, of various Convention parties throughout the metropolitan Atlanta area. Defendants copied and sold this entire hour-long WSB-TV special on Convention-related parties, entitled "You're Invited."

WSB-TV registered the copyrights in the twenty seven programs copied by Defendants, and filed its Complaint, together with a motion for preliminary injunction, on September 30, 1988. By their October 28, 1988 Answer, Defendants admitted that they copied and sold to the City of Atlanta copies of the 27 different WSB-TV broadcast news programs identified in WSB-TV's Complaint. At an evidentiary hearing, Defendants admitted further that they copied

for commercial sale every news and public affairs program of WSB-TV whether or not a buyer was available at the time of copying.

Defendant Duncan testified that Defendants' activities in this case differed from their activities at the time of WXIA only in that, as a result of the growth of their business, they did not have the time to engage in as much solicitation of new customers. She also testified that Defendants would not stop copying and selling copies of WSB-TV's broadcasts absent a court order.

On January 9, 1989, the district court made findings of fact and conclusions of law and granted WSB-TV's motion for preliminary injunction. Georgia Television Company d/b/a WSB-TV v. TV News Clips of Atlanta, 718 F. Supp. 939 (N.D.Ga. 1989) ("WSB-TV I"). The preliminary injunction

entered was identical to that entered by the district court and affirmed by the Eleventh Circuit in WXIA.

Following discovery, Defendants and WSB-TV filed cross-motions for summary judgment. On May 29, 1991, the district court denied Defendants' motion for summary judgment and granted WSB-TV's motion for summary judgment as to Defendants TV News Clips and Carolyn Duncan. Georgia Television Company d/b/a WSB-TV v. TV News Clips of Atlanta, 19 U.S.P.Q.2d 1372 (N.D.Ga. 1991) ("WSB-TV II"). By the order, the district court held that WSB-TV was entitled to a permanent injunction. The district court reasoned:

> In WXIA I, a nearly identical case involving the same defendants, when the District Court refused to grant permanent injunctive relief, the Eleventh Circuit Court of Appeals reversed and held that 'this is a classic case, then, of a past infringement and a substantial likelihood of future infringements which

> would normally entitle the copyright holder to a permanent injunction against the infringer.' WXIA I, 744 F.2d at 1499. The very fact that defendants are now engaging in the exact same conduct with a different plaintiff indicates the appropriateness of a permanent injunction in this case.

WSB-TV II, 19 U.S.P.Q.2d at 1376.

The injunction granted by the district court in this case is identical in form to that reviewed and affirmed by the Eleventh Circuit in WXIA.

By the order, the court also held that WSB-TV was entitled to recover from TV News Clips and Carolyn Duncan statutory damages in the amount of $4,000 for each of the 27 infringements, as well as costs and attorneys fees. The court stated:

> This Court finds that, as a result of the WXIA I litigation, defendants clearly were aware of the unlawfulness of their activities. Defendants admit that despite the outcome of WXIA I and despite the entry of a preliminary injunction in this case, defendants have continued to tape and sell copies of

> other stations' news broadcasts. In blatant disregard of the import of the previous litigation against defendants, defendants admit that 'until she [Duncan] is able to reach a mutually satisfactory arrangement with these broadcasters, or until she is no [sic] ordered by a court of law, she will continue her monitoring activities.'
>
> These responses indicate that defendants will continue to violate the law, requiring numerous copyright owners to bring successive actions in this and other courts, creating unnecessary litigation, and hoping that by sheer obstinance defendants will be able to outlast prospective plaintiffs.

WSB-TV II, 19 U.S.P.Q.2d at 1376-77.

On January 8, 1993, the Eleventh Circuit affirmed the judgment of the district court in a per curiam opinion. Defendants filed a petition for rehearing, which was denied on November 3, 1993.

III.

SUMMARY OF THE ARGUMENT

Defendants' claim that this case raises new, important issues requiring review by this Court is wrong. Although Defendants neglect to mention it, this is the second case in which judgment has been entered against them for repeated copyright violations.

This Court previously denied Defendants' petition for writ of certiorari in WXIA, a case nearly identical to this one and in which the identical injunction was entered against Defendants. The instant case is based on the same well settled body of case law as WXIA. This case raises no new issues, and it is not in conflict with the decisions of this Court, or any other court. Review by this Court is not warranted.

Both this case and WXIA involve straightforward applications of copyright principles to activities of the Defendants that are unquestionably infringing. The decisions are based on a substantial body of case law holding that news reports, including broadcast news reports, are protected by copyright. The finding in both cases that Defendants' "unabashedly commercial" activities do not constitute fair use is entirely consistent with the purpose of Section 107 of the Copyright Act and a substantial body of case law.

The injunctive relief entered against Defendants in this case was plainly appropriate. Defendant Duncan's own testimony establishes that, absent a court order, there is a certainty of future infringements in this case.

Defendants' claim that the injunction is overbroad because it prevents them from copying and

selling public domain material, government works and copyrighted material of others contained in WSB-TV's newscasts has no basis in reality. As the court found in WXIA, Defendants built their business based not on such material, but on material clearly protected by the station's copyright.

Defendants' claim that this case has sweeping copyright and fair access implications and establishes a "federal common law copyright" is nonsense. This case turns on its own facts and will affect few others besides Defendants. The record in this case establishes that, despite a previous judgment against them in WXIA, Defendants engaged in wholesale pirating of WSB-TV's copyrighted works for their own commercial gain. This cannot be fair use, and constitutes blatant copyright infringement.

Both the WXIA and WSB decisions are good law and have been relied on and cited authoritatively by a number of courts, including this Court in Harper & Row Publishers, Inc. v Nation Enterprises, 471 U.S. 539 (1985) ("Nation"). This Court should not accept Defendants' disingenuous characterization of this case as one that raises "new" and important issues requiring review by the Court. Defendants' petition for writ of certiorari should be denied.

IV.

REASONS WHY THE WRIT SHOULD BE DENIED

A. The District Court's Holding That Defendants' Systematic, Unauthorized Copying and Sale of WSB-TV's Copyrighted Programming Constitutes Copyright Infringement is Consistent With Basic Copyright Principles and Case Law

This case involves a straightforward application of basic copyright principles. The district court's

holding that WSB-TV's broadcast news and public affairs programs are protected by copyright, and that Defendants infringed WSB-TV's copyrights when it copied and sold twenty seven of WSB-TV's programs, is entirely consistent with basic copyright principles and a substantial body of case law.

1. WSB-TV's News and Public Affairs Programs are Protected by Copyright

Section 102(a) of the Copyright Act provides that copyright protection subsists "in original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a) (1988). It is undisputed that WSB-TV's programs are fixed in a tangible medium when they are recorded at the time of broadcast.

Moreover, the district court correctly held that WSB-TV's programs are sufficiently original for

copyright. There is a substantial body of case law holding that news reports, including broadcast news reports, meet the threshold level of originality for copyright protection.[2/] Indeed, there is no authority to the contrary.[3/]

2/ See, e.g., Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539 (1985); International News Service v. Associated Press, 248 U.S. 215 (1918); KCNC-TV Inc. v. Broadcast Information Services, Inc., 717 F. Supp. 1449 (D.Colo. 1988); WXIA I, 744 F.2d at 1494; Miller v. Universal City Studios, Inc., 650 F.2d 1365 (5th Cir. 1981); Iowa State University Research Foundation, Inc. v. American Broadcasting Companies, 621 F.2d 57 (2d Cir. 1980); Wainwright Securities, Inc. v. Wall Street Transcript Corp., 558 F.2d 91 (2d Cir. 1977), cert. denied, 434 U.S. 1014 (1978); Chicago Record-Herald Co. v. Tribune Ass'n., 275 F. 797 (7th Cir. 1921).

3/ In granting WSB-TV's motion for preliminary injunction, the district court made a specific factual finding that "WSB-TV has shown that its broadcasts represent a creative product and involve editorial discretion." WSB-TV I, 718 F. Supp. at 946. The district court made the same

(continued...)

The district court in WXIA I succinctly stated the operative legal principles:

> It is axiomatic that copyright protection does not extend to news 'events' or the facts or ideas which are the subject of the news reports. Miller v. Universal City Studios, Inc., 650 F.2d 1365, 1368 (5th Cir. 1981)' Wainwright Securities, Inc. v. Wall Street Transcript Corp., 558 F.2d 91, 95 (2d Cir. 1977), cert. denied, 434 U.S. 1014 (1978). But it is equally well-settled that copyright protection does extend to the reports themselves, as distinguished from the substance of the information contained in the reports. Wainwright, 558 F.2d at 95; International News Service v. Associated Press, 248 U.S. 215 (1918); see Chicago Record-Herald Co. v. Tribune Ass'n., 275 F. 797 (7th Cir. 1921); 1 Nimmer on Copyright § 2.11[B] (1983). Copyright protects the manner of expression of the news reports, "'the particular form or collocation of words in which the writer has communicated it.'" International News Service, 248 U.S. at 234.

3/ (...continued)
finding as to WXIA's programs in WXIA I. 744 F.2d at 1494 ("[t]he editorial judgment used to present effectively the events covered by the broadcast made it an 'original' work of authorship").

> Such protection extends to electronic news reports as well as written reports. See 17 U.S.C. § 102(a)(5), (6), and (7); see also Iowa State University Research Foundations, Inc. v. American Broadcasting Cos., 621 F.2d 57, 61 (2d Cir. 1980).

WXIA I, 572 F. Supp. at 1191-92.

Contrary to Defendants' claim, this Court's decision in Feist Publications, Inc. v. Rural Telephone Service Co., 111 S.Ct. 1282 (1991) ("Feist"), has no effect on the district court's holding in this case. As the district court stated below, the facts of Feist are "dramatically distinguishable" from this case. WSB-TV II, 19 U.S.P.Q.2d at 1377.

In Feist, this Court held that an alphabetical, "garden variety" listing of names, addresses and phone numbers did not possess the modicum of originality required for copyright. Feist, 111 S.Ct. at 1296-1297. Alphabetical white pages listings, however, are far

afield from news and public affairs programs, which involve editorial discretion, and combine such elements as video, audio, set design, music, camera angles, shot selection, narratives, lighting and graphics.[4/]

The fact is that the district court's holding in this case, and the court's holding in WXIA, are entirely

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4/ That such elements constitute original authorship for copyright purposes is expressly supported by the legislative history of the Copyright Act of 1976. The House Report noted that:

> When a football game is being covered by four television cameras, with a director guiding the activities of the four cameramen and choosing which of their electronic images are sent out to the public and in what order, there is no doubt that what the cameramen and the director are doing constitutes 'authorship.'

H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 52 (1976).

consistent with Feist.[5/] Copyright does not protect facts; it does, however, protect expression of facts. Indeed, not a single court has given Feist the radical interpretation advanced by Defendants.

2. The District Court's Rejection of Defendants' Alleged Defenses and Its Finding of Infringement Are Consistent With Case Law

Defendants' claim that their activities are both protected by the First Amendment and a fair use because they provide public access to news broadcasts is without merit, and the district court properly

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5/ That WSB-TV's news and public affairs programs are protected by copyright is also consistent with this Court's holding in Nation that, while "news of the day" is not protected by copyright, "factual narratives" clearly are. 471 U.S. at 556-57. Indeed, Defendants' theory would require reversal of two seminal copyright cases, Nation and International News Service v. Associated Press, 248 U.S. 215 (1918).

rejected it.[6/] This Court rejected the very same argument made by the defendant in Nation, concluding that "Any copyright infringer may claim to benefit the public by increasing access to the copyrighted work."[7/] 471 U.S. at 569.

In Nation, this Court recognized that the public interest in the free flow of information is protected by

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6/ Contrary to Defendants' claims, the record in this case establishes that WSB-TV provides public access to its news and public affairs programs. WSB-TV preserves for at least 30 days a broadcast-quality videotape copy of all of its broadcasts and, for certain selected broadcasts, retains such copies indefinitely. In addition, WSB-TV preserves for several years a non-broadcast quality audio and/or visual copy of all of its broadcasts. WSB-TV has always honored requests by the public to view tapes at the station. Defendants, on the other hand, destroy their tapes of programs within a month of the broadcast. WXIA I, 572 F. Supp. at 1196.

7/ This Court cited as authority for rejecting the defendant's argument the Eleventh Circuit's holding in WXIA I. Id. (citing 744 F.2d 1499-1500).

the copyright law's refusal to protect facts, as opposed to the expression of facts. The Court quoted the following passage from Iowa State University Research Found., Inc. v. American Broadcasting Cos., 621 F.2d 57 (2d Cir. 1980), a case involving ABC's use of a portion of a documentary film:

> ABC possessed an unfettered right to use the factual information revealed in Champion for the purpose of enlightening its audience, but it can claim no need to 'bodily appropriate' Iowa's expression of that information by utilizing portions of the actual film. The public interest in the free flow of information is assured by the law's refusal to recognize a valid copyright in facts. The fair use doctrine is not a license for corporate theft, empowering a court to ignore a copyright whenever it determines the underlying work contains material of possible public importance.

621 F.2d at 61 (citations omitted).

Moreover, the court in this case and in WXIA made specific findings that the Defendants activities

did little, if anything, to increase access to the stations' broadcasts. As the court stated in WXIA I:

> [Defendants'] sale of newscast copies does not substantially further public dissemination or perpetuation of news accounts. Since [Defendants] destroy[] [their] tapes within a month of the broadcast, the only archival purpose served by [their] activity is that attendant to getting news clips into private hands (actually, mostly into corporate file folders).

572 F. Supp. at 1196.

Defendants admitted copying and selling copies of the twenty seven registered programs at issue in this case. The district court's holding that Defendants' activities are neither protected by the First Amendment nor a fair use is entirely consistent with the decisions of this Court and other courts. Therefore, the district court correctly held that Defendants infringed the copyright in WSB-TV's programs.

B. The Injunction Entered by the District Court Is Lawful and Plainly Appropriate to the Violation

The injunction entered against Defendants in this case, identical to that previously entered against Defendants in WXIA, is plainly appropriate. The injunction is consistent with § 502 of the Copyright Act,[8/] which empowers courts to enjoin infringement of a copyright. It is also consistent with a substantial

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8/ Section 502(a) of the Copyright Act provides:

> Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

17 U.S.C. § 502(a) (1988).

body of case law involving a past infringement and a likelihood of future infringement.[9/]

Defendants admitted that, with the intent to commercially exploit, they copied every news and public affairs program of WSB-TV. They also admitted copying and selling copies of the twenty seven works at issue in this case, despite receipt of WSB-TV's repeated advance notices of infringements. Defendant Carolyn Duncan testified that Defendants would not stop copying and selling copies of WSB-TV's broadcasts absent a court order. Therefore, the

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9/ See, e.g., Walt Disney Co. v. Powell, 897 F.2d 565 (D.C. Cir. 1990); National Football League v. McBee & Bruno's, Inc., 792 F.2d 726 (8th Cir. 1986); WXIA I, 744 F.2d at 1499 n.17; Encyclopedia Britannica Ed. Corp. v. Crooks, 542 F. Supp. 1156 (W.D.N.Y. 1982); Association of American Medical Colleges v. Carey, 482 F. Supp. 1358 (N.D.N.Y. 1980); Ortho-O-Vision, Inc. v. Home Box Office, 474 F. Supp. 672 (S.D.N.Y. 1979).

district court properly held that "[t]his is a classic case . . . of a past infringement . . . which would normally entitle the copyright holder to a permanent injunction against the infringer." WSB-TV II, 19 U.S.P.Q.2d at 1376.

Section 502(a) of the Copyright Act grants courts broad equitable powers to prevent copyright infringements. As the court stated in WXIA I:

> The district court in this case had the power to issue an injunction because the statute provides for injunctions to prevent infringement of 'a copyright,' not necessarily the registered copyright that gave rise to the infringement action. The opposite result would be especially unjust in a case such as this one in which the registered work and the future works are so closely related, part of a series of original works created with predictable regularity and similar format and function. To refuse injunctive relief under these conditions would render meaningless the fact that registration is 'not a condition of copyright protection.'

744 F.2d at 1499, n.17.

Defendants' claim that the injunction is unlawful because it protects works not in suit and works not yet created is without merit. Courts have consistently held that injunctive relief is available for works of the plaintiff not in suit and future works where a pattern of infringement and a likelihood of future infringement is established.[10/] Here, Defendant

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10/ See, e.g., Basic Books, Inc. v. Kinko's Graphics Corp., 758 F. Supp. 1522, 1542 (S.D.N.Y. 1991) (injunction covering "works not currently existing but which may in the future be owned by plaintiffs"); Walt Disney Co. v. Powell, 897 F.2d 565 (D.C. Cir. 1990) (injunction may be extended to works not in suit where likelihood of future infringement established); National Football League v. McBee & Bruno's, Inc., 792 F.2d 726 (8th Cir. 1986) (permanent injunction for works not yet in existence); WXIA I, 744 F.2d at 1499 n.17 (permanently enjoining copying or sale of existing and future broadcast news and public affairs programs); Sailor Music v. Gap Stores, Inc., 668 F.2d 84 (2d Cir. 1981) (permanently enjoining defendant from playing radio broadcasts in clothing store that would infringe copyrighted musical compositions), cert. denied, 456 U.S. 945

(continued...)

Duncan's own testimony establishes that there is a certainty of future infringements.[11/]

10/ (...continued)
(1982); Fame Publishing Co. v. Alabama Custom Tape, Inc., 507 F.2d 667 (5th Cir. 1975) (permanently enjoining defendant from copying and selling copies of copyright owner's hit musical compositions), cert. denied, 423 U.S. 841 (1975); Paramount Pictures Corp. v. Labus, 16 U.S.P.Q.2d 1142 (W.D. Wis. 1990) (permanently enjoining future infringement of works presently owned or owned in the future by plaintiffs); Encyclopedia Britannica Ed. Corp. v. Crooks, 542 F. Supp. 1156 (W.D.N.Y. 1982) (permanently enjoining infringement of future works); Ortho-O-Vision, Inc. v. Home Box Office, 474 F. Supp. 672 (S.D.N.Y. 1979) (injunction covering future works); Southwestern Bell Tel. Co. v. Nationwide Ind. Dir. Serv., Inc., 371 F. Supp. 900 (W.D. Ark. 1974) (permanently enjoining infringement of existing works or works to be published in the future).

11/ Moreover, the programs at issue in this case were registered pursuant to § 411(b) of the Copyright Act. Section 411(b) provides that the copyright owner may, either before or after fixation of the work takes place, institute an action for infringement, fully subject to the remedies in §§ 502 through 506 of the Act. Therefore,
(continued...)

Defendants' theory that injunction cannot protect future works would emasculate the remedy of injunction in copyright infringement cases. If, as Defendants claim, no court could enjoin today an infringement that is certain to occur tomorrow, WSB-TV and other stations would be forced to file suit daily to prevent infringement of their copyrighted news and public affairs programs. As the district court found, the record in this case established that, absent an injunction, "defendants will continue to violate the law, requiring numerous copyright owners to bring successive actions in this and other courts, creating unnecessary litigation, and hoping that by

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11/ (...continued)
Congress created a statutory scheme in § 411(b) that specifically allows a copyright owner such as WSB-TV to obtain injunctive relief prior to the creation of the work.

sheer obstinance defendants will be able to outlast prospective plaintiffs." WSB-TV II, 19 U.S.P.Q.2d at 1377.

Defendants' claim that the injunction is overbroad because it prevents them from copying and selling public domain material, government works, material abandoned by WSB-TV and copyrighted material of others contained in WSB-TV's newscasts has no basis in reality. As the court found in WXIA II, Defendants' built their business based not on such material, but on material clearly protected by the station's copyright:

> [W]e do not read the injunction against copying or selling 'WXIA-TV's broadcast news programs' to preclude [Defendants] from taping any uncopyrightable work aired on the WXIA broadcasts -- although it is difficult to imagine how [Defendants] could profit from this narrow class of material. Indeed, we have seen no indication that the appellant does wish to tape these segments.

> We will not require the district court to list every minute or hypothetical exception to its injunctive order when the thrust of that order is clear. [Defendants'] professed concern that the injunction prohibits her from taping material abandoned by WXIA is similarly hypothetical. The record reflects that such material is minimal; indeed, [Defendants] could at best make only soundless video recordings of segments in which news anchors speak in the studio (since audio tapes and transcripts of the entire broadcast, and videotapes of non-studio reports are preserved by the station).

792 F.2d at 1014 (footnote omitted).

Framing an injunction appropriate to the facts of a particular case is a matter peculiarly within the discretion of the district court judge. Gore v. Turner, 563 F.2d 159, 165 (5th Cir. 1977). As in WXIA, Defendants admitted and the district court found that Defendants had regularly copied and sold WSB-TV's copyrighted newscasts and would continue to do so. Unless WSB-TV could obtain an injunction, WSB-TV

could enforce its copyrights in its programs only by finding out which stories have been copied, registering those stories, and bringing many different infringement actions. Accordingly, the district court properly held that WSB-TV is entitled to a permanent injunction.

V.

CONCLUSION

This case involves a straightforward application of basic copyright principles to activities of the Defendants that are unquestionably infringing. Contrary to Defendants' claims, this case does not raise new or important issues requiring review by this Court, and the decision is not in conflict with the decisions of this Court, or any other court. The injunction entered against Defendants in this case, which is identical to that previously entered against

these very same Defendants in WXIA, is plainly appropriate.

Respondent respectfully requests that this Court deny the Defendants' petition for writ of certiorari.

Respectfully submitted,
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